

CRS Report for Congress

Received through the CRS Web

Education and Training Issues Related to Major Disasters

Updated November 4, 2005

Coordinated by Charmaine Mercer
Analyst in Social Legislation
Domestic Social Policy Division

Richard N. Apling, Paul Irwin, Ann Lordeman,
Rebecca R. Skinner, David P. Smole
Specialists in Social Legislation
Domestic Social Policy Division

| Report Documentation Page | | | | Form Approved OMB No. 0704-0188 | |
|--|------------------------------------|-------------------------------------|--|--|---------------------------------|
| Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. | | | | | |
| 1. REPORT DATE 04 NOV 2005 | | 2. REPORT TYPE N/A | | 3. DATES COVERED - | |
| 4. TITLE AND SUBTITLE Education and Training Issues Related to Major Disasters | | | | 5a. CONTRACT NUMBER | |
| | | | | 5b. GRANT NUMBER | |
| | | | | 5c. PROGRAM ELEMENT NUMBER | |
| 6. AUTHOR(S) | | | | 5d. PROJECT NUMBER | |
| | | | | 5e. TASK NUMBER | |
| | | | | 5f. WORK UNIT NUMBER | |
| 7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) David D. Acker Library and Knowledge Repository Defense Acquisition University Fort Belvoir, VA | | | | 8. PERFORMING ORGANIZATION REPORT NUMBER | |
| 9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) | | | | 10. SPONSOR/MONITOR'S ACRONYM(S) | |
| | | | | 11. SPONSOR/MONITOR'S REPORT NUMBER(S) | |
| 12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release, distribution unlimited | | | | | |
| 13. SUPPLEMENTARY NOTES | | | | | |
| 14. ABSTRACT | | | | | |
| 15. SUBJECT TERMS | | | | | |
| 16. SECURITY CLASSIFICATION OF: | | | 17. LIMITATION OF ABSTRACT SAR | 18. NUMBER OF PAGES 41 | 19a. NAME OF RESPONSIBLE PERSON |
| a. REPORT unclassified | b. ABSTRACT unclassified | c. THIS PAGE unclassified | | | |

Education and Training Issues Related to Major Disasters

Summary

It is estimated that more than 370,000 elementary/secondary school children have been displaced by the recent hurricanes. In addition, it is estimated that approximately 30 institutions of higher education (IHEs) in the affected areas have been severely damaged, and nearly 100,000 postsecondary students have been displaced as a result. According to the Congressional Budget Office, the combined direct effect of Hurricanes Katrina and Rita on employment probably resulted in the loss of between 293,000 and 480,000 jobs. Many of these individuals will not likely return to their homes, jobs, and/or schools within the 2005-2006 academic year. It is likely that numerous program regulations and statutes will need to be revisited to address the needs of the students and families affected by Katrina, as well as financial issues of the institutions that help make education possible for many of these individuals.

After a discussion of the applicability of the Stafford Act to education and training facilities, this report provides a general overview of the federally funded programs administered by the Department of Education (ED) that might be used to help those affected by this disaster, and the existing statutory and regulatory authorities available to assist individuals who have been affected by a major disaster, where applicable. Training programs administered by the Department of Labor (DOL) are also included. Specifically, training programs for youth, adults and dislocated workers are discussed. The report includes a discussion of legislative and funding options that might be considered for providing additional relief to the victims of this major disaster.

Several existing program requirements under the Elementary and Secondary Education Act (ESEA) will likely need to be addressed — maintenance of effort, adequate yearly progress, and highly qualified teachers requirements — to assist many of the schools and states in the affected areas. In addition, programs such as the Education for Homeless Children and Youth and Project SERV could be used to assist these students and schools, if additional funding were provided. The Secretary of Education has authority to waive several of the requirements for aid recipients, institutions of higher education, and financial institutions when a disaster has been declared. Similar to the ESEA, several provisions might need to be revisited — 50% rules relating to distance education programs, student loan forbearance period, and the “Return of Title IV Funds” calculation — to provide students and IHEs with additional relief.

The Workforce Investment Act (WIA) authorizes employment and training opportunities for youth, adults, and dislocated workers. These programs are particularly pertinent for the individuals recently affected by the hurricane, because homeless individuals are automatically considered low income and are granted priority for intensive training and services.

This report will be updated as warranted by major legislation or other relevant developments.

Key Staff for Education-Related Disaster Relief Issues

| Area of Expertise | Name | Telephone |
|---|--|------------------|
| Coordinator | Charmaine Mercer | 7-4894 |
| Adequate Yearly Progress (AYP) | Wayne Riddle David P. Smole | 7-7382 7-0624 |
| Appropriations for Labor-HHS-ED | Paul Irwin Rebecca R. Skinner | 7-7573 7-6600 |
| Assessment in Education | Wayne C. Riddle | 7-7382 |
| Campus-Based Student Aid | David P. Smole | 7-0624 |
| Education of the Disadvantaged, Title I | Wayne C. Riddle | 7-7382 |
| Education for Homeless Children and Youth | Paul Irwin | 7-7573 |
| Fund for the Improvement of Education | Paul Irwin | 7-7573 |
| Fund for the Improvement of Postsecondary Education | Paul Irwin | 7-7573 |
| Higher Education | Charmaine Mercer Rebecca R. Skinner | 7-4894 7-6600 |
| Impact Aid | Rebecca R. Skinner | 7-6600 |
| Innovative Programs/Education Block Grants | Rebecca R. Skinner | 7-6600 |
| Institutional Eligibility (HEA) | Rebecca R. Skinner | 7-6600 |
| Job Training and Employment Services | Ann Lordeman | 7-2323 |
| K-12 General Issues/No Child Left Behind | David P. Smole Wayne C. Riddle | 7-0624 7-7382 |
| Legal Issues | Jody Feder | 7-8088 |
| Pell Grants | Charmaine Mercer | 7-4894 |
| Project SERV | Edith Cooper | 7-7019 |
| Special Education, IDEA | Richard N. Apling Nancy Jones | 7-7352 7-6976 |
| Stafford Act — Education Related | Rebecca R. Skinner | 7-6600 |
| Stafford Act — General | Keith Bea Shawn Reese | 7-8672 7-0635 |
| State and School Data | Laura Monagle | 7-7351 |
| Student Aid | Charmaine Mercer | 7-4894 |
| Student Loans | Adam Stoll | 7-4375 |
| Teacher Issues | Jeffrey J. Kuenzi | 7-8645 |

Contents

| | |
|--|----|
| Introduction | 1 |
| The Robert T. Stafford Disaster Relief Act and Education Disaster Relief | 2 |
| Eligibility for Assistance | 2 |
| Available Benefits | 3 |
| Duplication of Benefits | 4 |
| Waiver of Administrative Conditions | 4 |
| Other Authorities | 5 |
| Elementary and Secondary Education | 5 |
| Flexibility and Waivers | 6 |
| Program Requirements | 7 |
| Maintenance of Effort | 7 |
| Student Assessments | 7 |
| Adequate Yearly Progress and Accountability | 8 |
| Highly Qualified Teachers | 9 |
| Title I-A Funding | 9 |
| IDEA Provisions | 12 |
| Relevant Programs | 12 |
| Education for Homeless Children and Youth | 13 |
| Fund for the Improvement of Education | 14 |
| Impact Aid | 14 |
| Innovative Programs | 15 |
| Project SERV | 16 |
| Additional Options for Relief | 16 |
| Issues: Elementary/Secondary Education and IDEA | 17 |
| Funding | 18 |
| IDEA | 18 |
| Higher Education | 20 |
| General Provisions for Institutions | 20 |
| 50% Rules | 22 |
| General Provisions for Students | 23 |
| Relevant Programs | 24 |
| Pell Grants | 24 |
| Campus-Based Student Aid Programs | 25 |
| Loans: Federal Family Education Loans and Direct Loans | 26 |
| Fund for the Improvement of Postsecondary Education | 28 |
| Department of Labor Employment and Job Training Programs | 28 |
| WIA Waivers | 29 |
| Youth | 30 |
| Adults and Dislocated Workers | 30 |
| One-Stop Centers | 31 |
| Legislative Proposals Addressing Education and Training | 31 |

| | |
|--|----|
| Administration's Proposal | 35 |
| Elementary and Secondary Education | 35 |
| Higher Education | 36 |
| Employment and Training | 36 |

Education and Training Issues Related to Major Disasters

Introduction

It is estimated that more than 370,000 students have been displaced by the recent hurricanes.¹ In addition, it is estimated that approximately 30 institutions of higher education (IHEs) in the affected areas have been severely damaged, and nearly 100,000 postsecondary students have been displaced as a result.² According to the Congressional Budget Office, the combined direct effect of Hurricanes Katrina and Rita on employment probably resulted in the loss of between 293,000 and 480,000 jobs.³ Many of these individuals will likely not return to their homes, jobs, and/or schools within the 2005-2006 academic year. It is likely that numerous federal program regulations and legislation will need to be revisited to address the needs of the students and families affected by Hurricanes Katrina and Rita, as well as the financial needs of the institutions that help make education and training possible for many of these individuals.

This report includes a short description of the federal Stafford Act and its applicability to education and training facilities to provide context for the specific education and workforce development programs and requirements and their intersection with federal emergency management. The report further provides an overview of the federally funded programs administered by the Department of Education (ED) that may be used to help those affected by major disasters and the specific existing statutory and regulatory authorities available to assist individuals who have been affected by a major disaster, where applicable. Training programs administered by the Department of Labor (DOL) are also included. Specifically, training programs for youth, adults and dislocated workers are discussed. A description of each program, program requirements, and regulations, where applicable, is then followed by a discussion of possible legislative and funding options that might be considered for providing additional relief to the victims of

¹ See, for example, "Louisiana Awarded \$20.0 million *No Child Left Behind* Grant to Assist Damaged Charter Schools, Create New Charter Schools." Available at [<http://www.ed.gov/news/pressreleases/2005/09/09302005.html>].

² Data on the number of affected IHEs available on the American Council on Education website. Available online at [<http://www.acenet.edu/AM/Template.cfm?Section=HENA&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=11807>]. Information on the status of the affected IHE are available at: [<http://www.campusrelief.org/x154.xml>].

³ See Congressional Budget Office testimony on the Macroeconomic and Budgetary Effects of Hurricanes Katrina and Rita before the U.S. House of Representatives Committee on the Budget, Oct. 6, 2005. Available at [<http://www.cbo.gov/ftpdocs/66xx/doc6684/10-06-Hurricanes.pdf>].

major disasters. The report concludes with an analysis of selected issues related to major disasters and education and training, followed by an overview of legislative action addressing education and training and the Administration's disaster relief proposal.

The Robert T. Stafford Disaster Relief Act and Education Disaster Relief

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act, 42 U.S.C. 5121 et seq.) authorizes the President to issue major disaster declarations upon which federal agencies are authorized to provide assistance to areas affected by disasters.⁴ An executive order issued by the President provides the Secretary of the Department of Homeland Security (DHS) with responsibility for administering most of the Stafford Act.⁵ The act is authorized to provide assistance to individuals, families, state and local governments, and certain nonprofit entities. Appropriations for the Disaster Relief Fund (DRF) are used to provide this assistance.

Eligibility for Assistance

Both public facilities and private nonprofit facilities, under certain circumstances, are eligible for assistance under the Stafford Act.⁶ Public elementary and secondary schools and postsecondary institutions qualify for disaster relief assistance as public facilities used for educational purposes. Non-profit private elementary and secondary schools and postsecondary institutions that are open to the general public may also qualify for assistance as non-profit institutions providing essential services. Section 406(a)(3), however, requires private nonprofit facilities to apply for a disaster loan under Section 7(b) of the Small Business Act (15 USC 636) prior to receiving support through the Stafford Act.⁷ If the owner or operator of the facility is determined to be ineligible for the loan or has obtained a loan in the maximum amount for which the Small Business Administration has determined the

⁴ For general information about the Stafford Act, see CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Keith Bea. Also see the Stafford Act (42 U.S.C. 5121 et seq) and related regulations in 44 CFR 206.

⁵ Executive Order 13286, issued Feb. 28, 2003, assigned responsibility to administering most provisions of the Stafford Act to the Secretary of DHS. This superseded previous executive orders that provided the Federal Emergency Management Agency (FEMA) with responsibility for administering most provisions of the Stafford Act. FEMA is part of DHS and continues to play a critical role in the actual implementation of the Stafford Act.

⁶ To be eligible for assistance, private non-profit organizations generally must provide essential services of a governmental nature to the general public.

⁷ Private nonprofit facilities providing critical services in the event of a major disaster are eligible for support under the Stafford Act without first applying for a loan through the Small Business Act. Critical services include power, water, sewer, wastewater treatment, communications, and emergency medical care.

facility is eligible, the facility may be eligible to receive support through the Stafford Act.⁸ The Stafford Act does not provide assistance to for-profit institutions that provide educational services. Thus, proprietary (i.e., for-profit postsecondary) institutions are **not** eligible to receive disaster relief assistance through the Stafford Act.

Available Benefits

For schools that are eligible for public assistance through the Stafford Act, a variety of emergency work and permanent work services may be available.⁹ For example, schools would be eligible for debris removal assistance and emergency work to provide such services as access to the building and communications. Support is also provided for the temporary relocation of essential services, such as school classrooms, government facilities, and private nonprofit critical health facilities. Under the permanent work category, FEMA is to address needs related to buildings and equipment. Schools would be eligible for the repair or replacement of buildings and their contents.¹⁰ Contents includes furnishings and equipment. Assistance may also be requested to replace supplies and inventory and library books and publications.

The initial deadlines for completing debris removal and emergency work is six months from the time a major disaster is declared. These deadlines may be extended by the state for an additional six months for extenuating circumstances. The deadline for completion of permanent work (e.g., repairs) is 18 months from the declaration date of a major disaster, but this deadline may be extended by the state for an additional 30 months for extenuating circumstances.

Eligible entities needing assistance following a major disaster must apply for support. Eligible applicants include state government agencies, local governments, Indian tribes, and private nonprofit organizations and institutions that provide specific services. Based on these applications, a determination is made as to how much support an applicant will receive from FEMA. Although grants provided by FEMA are not capped at a specific amount, they may be limited by congressional appropriations for disaster relief.

⁸ On October 18, 2005, FEMA announced that it will provide grants to parochial schools, nursing homes, community centers, and other religious institutions providing essential services such as education. Facilities used primarily for religious purposes are not eligible to receive FEMA grants for reconstruction and repairs. See, *Parochial Schools to Get U.S. Funds for Rebuilding*, October 19, 2005. Available at [http://www.washingtonpost.com/wp-dyn/content/article/2005/10/18/AR2005101801622_pf.html].

⁹ For more information about specific support available through the Stafford Act, see, *Public Assistance Guide*, FEMA Publication 322, Oct. 1999. Available at [<http://www.fema.gov/rrr/pa/paguided.shtm>].

¹⁰ A variety of special provisions apply to the repair and replacement of buildings. For example, FEMA may pay for upgrades required by codes and standards. FEMA is to rebuild structures to have the same capacity as the original building, but will make changes to the design if the standard for space per occupant has changed since the original building was constructed.

Once the funds are received, it is up to the applicant to determine the priorities for the uses of the funds. That is, state and local communities must determine which structures to rebuild or repair first. In some communities, for example, priority may be given to hospitals, while in other communities, priority may be given to schools. As this decision is made on a community-by-community basis, it is impossible to determine how quickly schools may receive needed repairs and renovation.

Duplication of Benefits

The Stafford Act prohibits entities suffering losses as a result of a major disaster, such as the recent hurricanes, from receiving duplicate benefits for the same project (42 USC 5155). That is, if funds are appropriated to provide the same types of benefits that may already be provided through the Stafford Act, the result may be considered a duplication of benefits. Payments from insurance companies are considered duplication of benefits, and FEMA is required to reduce the amount of assistance provided by any actual or anticipated insurance payments. Thus, if Congress acted to provide separate funding to schools affected by major disasters through other federal agencies, such as ED, this would be considered a duplication of benefit, unless Congress made an exception to the provision. Alternatively, recipients of aid through a separate ED program could be prohibited from receiving benefits under the Stafford Act and vice versa. The premise of a separate funding source assumes that the ED funding would provide for repair or reconstruction of the facility and its contents, just as the Stafford Act already does. An advantage an ED program might have would be to get aid to schools more quickly than may occur under the Stafford Act.

Waiver of Administrative Conditions

The Stafford Act provides for waivers of administrative conditions (42 USC 5141). The provision reads as follows:

Any federal agency charged with the administration of a federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

This provision provides the Secretary of Education (Secretary) with broad authority to waive regulatory requirements, upon request. Because the provision applies to “administrative conditions for assistance,” the statutory language implies that regulatory, but not statutory, requirements may be waived. Currently, the Secretary has already taken several actions to waive various administrative requirements pertaining to elementary, secondary, and higher education.¹¹ Whether the Secretary will use this authority to grant additional waivers is unclear.

¹¹ See discussion in subsequent sections on waivers granted by ED.

Other Authorities

Other federal authorities can be activated in response to major disasters or emergencies. Most notable is the National Emergencies Act of 1976 (NEA; P.L. 94-412).¹² The recent hurricanes have not resulted in the President declaring a national emergency under the NEA. If a national emergency were declared, Title II of the National Emergencies Act requires the President to indicate the specific powers and authorities being activated in response to the national emergency. For example, with respect to higher education, the President could specifically choose to activate the Higher Education Relief Opportunities for Students Act of 2003 (HEROS Act; P.L. 108-7). The HEROS Act provides the Secretary with waiver authority of statutory and regulatory requirements that apply to the Higher Education Act, Title IV student financial aid programs. The HEROS act can only be implemented, however, in connection with a war or other military action or national emergency. As a national emergency under the NEA has not been declared in response to the recent hurricanes, the HEROS Act does not apply.

Elementary and Secondary Education

The Elementary and Secondary Education Act of 1965 (ESEA) was initially enacted to provide financial support and guidance for K-12 education. The ESEA (P.L. 107-110) as amended by the No Child Left Behind Act of 2001 (NCLBA); represents the major federal commitment to the nation's elementary and secondary schools. The funding that the federal government supplies to K-12 education represents less than 10% of the nation's K-12 education budget. For FY2005, over \$38 billion was appropriated for elementary and secondary education programs. The single largest program authorized by the ESEA is Title I-A, funded at \$12.7 billion for FY2005. This program provides funding for supplementary educational services for disadvantaged children.

In addition to the ESEA, another important source of federal funding for elementary and secondary education is the Individuals with Disabilities Education Act (IDEA). IDEA is both a grants statute and a civil rights statute. The act provides federal funding for special education and related services for children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE). The statute also contains detailed due process provisions to ensure the provision of FAPE. Total IDEA funding for FY2005 was \$11.7 billion.

The following section provides an overview of the Secretary's existing general statutory and regulatory authorities for elementary and secondary education programs. In addition, select programs and program requirements that pertain to individuals and institutions affected by the recent hurricanes are also included. Finally, each of the programs and the requirements are followed by possible legislative and funding options for responding to major disasters.

¹² For more information about national emergencies, see CRS Report 98-505, *National Emergency Powers*, by Harold C. Relyea.

Flexibility and Waivers

In administering ESEA programs, the Secretary has authority under ESEA Title IX-D to waive most statutory and regulatory requirements under the ESEA for a state education agency (SEA), local education agency (LEA), Indian tribe, or school that receives funding through an ESEA program and which requests a waiver. The entity requesting the waiver must submit a request to the Secretary stating: the program affected by the request; the requirements to be waived and how the waiving of the requirements will increase the quality of student instruction and student academic achievement; specific measurable goals for the entity and how progress toward meeting those goals will be measured; how the waiver will assist in meeting those goals; and how populations served under programs for which waivers are requested will continue to be served. Among the requirements that may **not** be waived are statutory or regulatory requirements relating to the procedures for allocating or distributing funds, the requirement that federal funds must supplement and not supplant non-federal funds, the equitable participation of private school students and teachers, and applicable civil rights requirements.

Beyond the ESEA Title IX-D waiver authority, the NCLBA and the Education Flexibility Partnership Act of 1999 (P.L. 106-25) authorize additional forms of flexibility for at least some SEAs and LEAs.¹³ One of these, ED-FLEX, represents essentially a transfer from ED to SEAs of authority to grant waivers similar to those authorized under ESEA Title IX-D. Ten states currently participate in ED-FLEX, although only one of these (Texas) is among the states most heavily affected by Hurricanes Katrina and Rita. Of the other flexibility authorities authorized under the NCLBA, only two are extensively used. One allows most LEAs and SEAs to transfer up to 50% of their formula grants among four ESEA programs, while the second allows very small, rural LEAs to combine or transfer any funds received under several ESEA programs.

The Secretary has no general waiver authority under IDEA. The recent reauthorization of IDEA added a paperwork reduction pilot program (§609), which permits the Secretary to waive for up to four years for up to 15 states, statutory or regulatory requirements (except civil rights requirements) that applying states link to excessive paperwork or other non-instructional burdens. Granting states affected by a major disaster, such as the recent hurricanes, access to this pilot program could reduce burdens resulting from the influx of displaced children with disabilities. However, ED is still in the process of developing the competition for this pilot program.¹⁴

¹³ See CRS Report RL31583, *K-12 Education: Special Forms of Flexibility in the Administration of Federal Aid Programs*.

¹⁴ According to the Secretary, “at this point, the timing of competitions for these pilots is not certain but also not immediate.” Letter to the Honorable Shirley Neeley, Texas Commissioner of Education, September 21, 2005, p. 6. Available online at [<http://hurricanehelpforschools.gov/letters/050921.html>]

Program Requirements

The NCLBA contains a number of new requirements related to pupil assessments for SEAs and LEAs participating in ESEA Title I-A, Education for the Disadvantaged. Many of the provisions of NCLBA focus on pupil assessment, adequate yearly progress (AYP) requirements, program improvement and corrective actions for schools and LEAs, allocation formulas, flexibility, and services to private school pupils, staff, and parents. Each of these provisions as they pertain to the recent hurricanes is discussed below.

Maintenance of Effort. For some ESEA programs (Title I-A, Education for the Disadvantaged; Title V-A, Innovative Programs Block Grants; and Title VIII, Impact Aid), LEAs are required to maintain a fiscal effort of at least 90% of the previous year's amount, as measured on a per-pupil basis. While maintenance of effort (MOE) requirements may not be waived under ESEA Title IX-D, under individual program requirements, in the case of a major disaster or a precipitous decline in the financial resources of an LEA, the Secretary is permitted to waive the MOE requirements for one year only. States and LEAs that have been affected by an influx of students displaced by the recent hurricanes may need to have the MOE requirements waived if funds available for expenditures on education do not increase in proportion to the increase in students.

IDEA has a 100% maintenance of effort requirement for states' financial support of special education. The Secretary has authority to waive this requirement for one year for "exceptional or uncontrollable circumstances such as a major disaster." Secretary Spellings has looked favorably on requests for such waivers by SEAs adversely affected by the recent hurricanes.¹⁵ LEAs also must maintain effort at 100%; however, IDEA provides a broader set of exceptions for LEAs than it does for states. For example, LEAs may reduce spending on special education (that is, reduce effort) if the LEA's number of children with disabilities declines from one year to the next.

Student Assessments. States receiving funding under Title I-A must meet a number of requirements with respect to administering academic assessments, making AYP toward meeting state standards of academic achievement, and reporting on school quality. Beginning in school year 2005-2006, states are required to administer academic assessments in reading/language arts and mathematics at least once in each of grades 3 through 8, and at least once during grades 10 through 12. In the event of exceptional or uncontrollable circumstances, such as a major disaster, the Secretary is authorized to extend the period for implementing this requirement for one additional year.¹⁶ Generally, academic assessments that are component parts of state accountability systems must be administered to all students, regardless of

¹⁵ See the Secretary's letter to the Honorable Cecil J. Picard, Louisiana State Superintendent of Education (September 21, 2005), p. 2. Available at [<http://hurricanehelpforschools.gov/letters/050921a.html>].

¹⁶ For further discussion of requirements for academic assessments, see CRS Report RL31407, *Educational Testing: Implementation of ESEA Title I-A Requirements Under the No Child Left Behind Act*, by Wayne C. Riddle.

how long they have been enrolled or whether the assessment results¹⁷ will be included for accountability purposes.¹⁸

Adequate Yearly Progress and Accountability. Another provision of the ESEA requires schools to demonstrate that students are making adequate yearly progress (AYP). Schools must also demonstrate that students with disabilities, which are a special subgroup under the AYP requirements, are also making AYP. AYP is primarily determined by the aggregate scores of various groups¹⁹ of students on state academic assessments.²⁰ Schools and LEAs may be identified for school improvement, corrective action, or restructuring after failing to make AYP toward proficiency on state assessments for two or more years. In instances when schools or LEAs are so identified, they face a series of increasingly severe consequences.²¹ In instances where a school is affected by a major disaster or a precipitous decline in financial resources, an LEA may delay for one year, implementation of the requirements for a second year of school improvement, corrective action, or restructuring. A state may also delay implementation of the requirements of corrective action for an LEA if it is affected by a major disaster or a precipitous decline in financial resources. In either case, the delay period shall **not** be taken into account in determining the number of consecutive years of failure to make AYP.²²

Anticipating that an influx of displaced children, including those with special needs, could jeopardize AYP for some LEAs and schools, the Secretary has proposed a temporary option for a separate subgroup of *displaced children*. Displaced children who otherwise would be included in other subgroups (such as children with disabilities) could (at the state's discretion and based on the Secretary's waiver approval) "appear only in this subgroup for NCLB reporting and accountability purposes and not in any other subgroup to which they usually belong."²³

¹⁷ The assessment results (i.e., percent tested, and percent at the various proficiency levels: advanced, proficient, basic, and below basic) of all students who are administered assessments are required to be reported on state, LEA, and school report cards.

¹⁸ When states submitted their accountability plans for approval, they were required to outline whether the assessment results of students attending schools less than a full year would be included in determining AYP at the state and LEA levels. Links to approved state accountability plans are available at [<http://www.ed.gov/admins/lead/account/stateplans03/index.html>].

¹⁹ Under the provisions of NCLBA, state education plans must group students by certain demographic characteristics, such as race/ethnicity, grade level, disabled, and limited English proficiency.

²⁰ For additional information on AYP, see CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act*, by Wayne Riddle.

²¹ For detailed information on the requirements of school improvement, corrective action, and restructuring, see U.S. Department of Education, *LEA and School Improvement: Non-Regulatory Guidance*, (Jan. 7, 2004). Available at [<http://www.ed.gov/policy/elsec/guid/schoolimprovementguid.doc>].

²² ESEA, Section 1116(b)(7)(D) and Section 1116(c)(10)(F).

²³ Letter to Chief State School Officers, September 29, 2005, p. 1. Available online at

Highly Qualified Teachers. Each SEA receiving ESEA Title I-A funding must have a plan to ensure that, by no later than the end of the 2005-2006 school year²⁴, all teachers teaching in core academic subjects²⁵ within the state will meet the definition of a highly qualified teacher. Generally speaking, this means that all teachers must have full state certification; not have had any certification requirements waived on an emergency, temporary, or provisional basis; and have at least a bachelor's degree.²⁶ This requirement might make it difficult for receiving schools to fill vacancies. It may also be difficult for schools affected by the recent hurricanes to comply with this requirement if they are not fully operational this academic year. The Secretary has previously used authority under the new law to waive and/or create flexibility in these requirements for specific groups of teachers or types of schools (e.g., science teachers and rural schools).

The recent reauthorization of IDEA also required all teachers of core academic subjects to be highly qualified by the end of the 2005-2006 academic year and applied the NCLBA definition of highly qualified (with certain exceptions) to all special education teachers.²⁷ In the wake of the recent hurricanes, at least one state has requested an extension of this deadline. Although the Secretary has indicated in her response to this request that "we are currently reviewing this topic in general,"²⁸ to date no policy guidance has been posted on the ED website. It is unclear whether dislocated teachers will be able to achieve highly qualified status in their new locations, or whether affected states will have the resources to ensure that teachers remaining in those states can meet the highly qualified teacher criteria.

Title I-A Funding. Title I-A, Education for the Disadvantaged is the largest K-12 education federal grant program. Funds are allocated to LEAs according to four formulas (basic grants formula, concentration grants formula, targeted grants formula, and education finance incentive grants formula).²⁹ Each Title I-A allocation

²³ (...continued)

[<http://www.ed.gov/policy/elsec/guid/secletter/050929.html>].

²⁴ In an October 21, 2005 letter to Chief State School Officers, the Secretary stated that this deadline might be extended for one year for any state meeting a number of specific criteria. The full text of the letter is available at [<http://www.ed.gov/policy/elsec/guid/secletter/051021.html>].

²⁵ According to No Child Left Behind, these subjects are English, reading or language arts, math, science, history, civics and government, geography, economics, the arts and foreign language

²⁶ For additional information about highly qualified teacher requirements see CRS Report RL30834, *K-12 Teacher Quality: Issues and Legislative Action*, by James B. Stedman.

²⁷ For further information, see CRS Report for Congress RL32716, *Individuals with Disabilities Education Act (IDEA): Analysis of Changes Made by P.L. 108-446*, by Richard N. Apling and Nancy Lee Jones.

²⁸ See the Secretary's letter to Cecil J. Picard, Louisiana State Superintendent of Education (September 21, 2005), p. 2. Available at [<http://hurricanehelpforschools.gov/letters/050921a.html>].

²⁹ ESEA Title I-A allocation procedures are explained in further detail in CRS Report (continued...)

formula takes into account a number of different factors; however, the most significant factor is the number children ages 5 to 17 who are at or near the poverty line (hereafter these children are referred to as formula children).³⁰

As previously discussed, the requirements relating to the allocation and distribution of funds are among the provisions that may not be waived. Due to the considerable displacement and migration of students caused by the effects of a major disaster, and because Title I-A allocations are based on the number of formula children residing in LEAs *prior to the year for which funds are allocated*, there may be a considerable difference between the number of formula children upon which the allocation of Title I-A funds was based and the number of formula children who enroll in the current school year. Because of the potentially large numbers of students, including students with disabilities, who have been displaced by the hurricanes, and relocated to new LEAs, which in many instances may be across state lines, there may be requests for a redistribution of Title I-A funding. The Secretary has addressed this issue in general by noting that ED “will work with States and school districts that want to transfer or reallocate Federal funds between districts, when a particular district or districts are unable to use funds they previously received.”³¹

Aside from the general prohibition against waiving provisions related to the allocation and distribution of funds, a number of other concerns may need to be addressed when considering whether and how to reallocate Title I-A funds across affected states and LEAs. These include deciding whether LEAs that have closed for part or all of the current school year should be permitted to carry over their funds for an additional fiscal year; determining whether current year funds may be reallocated across affected LEAs, and if so, how this would be accomplished; and determining whether hold-harmless provisions would apply to temporarily closed LEAs in this or subsequent school years. These issues are briefly addressed below.

- Under ESEA Title I-A, LEAs generally may carry over up to 15% of their funding so that it remains available for obligation for one additional fiscal year. Section 1127 of the ESEA permits SEAs to

²⁹ (...continued)

RL31487, *Education for the Disadvantaged: Overview of ESEA Title I-A Amendments Under the No Child Left Behind Act*, by Wayne Riddle.

³⁰ The procedures for determining children to be counted for ESEA Title I-A allocations are specified in Section 1124(c) of the ESEA. Children aged 5 to 17 from families below the poverty level as determined by the U.S. Census Bureau through its Small Area Income Poverty Estimates (SAIPE) represent the majority of children counted for purposes of allocating Title I-A funding. Children from families above the poverty level who also receive Temporary Assistance for Needy Families (TANF), children living in foster homes, and neglected and delinquent youth also are counted. A brief overview of school district SAIPE estimates is available online at [<http://www.census.gov/hhes/www/saipe/school/sd02over.html>]. There is a time lag of between data collection and when data become available for use in Title I-A funding allocations — typically two years.

³¹ ED policy letter to Chief State School Officers, September 7, 2005. Available at [<http://www.ed.gov/policy/elsec/guid/secletter/050907.html>].

waive the 15% limitation once every three years if it determines that an LEA's request is reasonable and necessary, or because supplemental funding for Title I-A becomes available. In the case of LEAs that temporarily close for an entire year as a result of the hurricane, states may need to consider whether such LEAs still exist for Title I-A purposes, and if so, how much funding they should be permitted to carry over. If an LEA is not operating during the 2005-2006 school year, it might seek to carry over up to 100% of its funds for one additional year.

- The ESEA contains special allocation procedures that typically are used to adjust Title I-A allocations (within each state) to LEAs for the purposes of reserving state administrative funds and allocating funds to charter schools, newly created LEAs, and to small LEAs serving areas with populations of less than 20,000 total residents.³² In a September 12, 2005, ED policy letter addressing possible responses to the effects of Hurricane Katrina, the Secretary stated:

Under §1126(b) of the ESEA, a State educational agency (SEA) may allocate Title I, Part A funds, without any action by us, among affected LEAs if an LEA provides free public education for children who reside (or resided in) the school district of another LEA. Moreover, under §1126(c), if an LEA determines that the amount of Title I, Part A funds an LEA would receive is more than the agency will use or if other unused Title I, Part A funds are available, the SEA may, without any action by ED, reallocate those funds among districts on the basis of need in accordance with criteria established by the SEA.³³

- Hold-harmless provisions apply to funds allocated under each of the four previously mentioned allocation formulas. In general, hold-harmless percentages — limiting the amount by which a formula grant may be reduced from one year to the next — are based on the number of formula children aged 5-17 as a percentage of the LEA's total population of children aged 5-17.³⁴ For the hold-harmless provisions to apply to the applicable formula, an LEA must be eligible in the current year to receive a basic, targeted, or education finance incentive grant, or have been eligible to have received a

³² ESEA, Section 1126(b) (20 U.S.C. 6338(b)). Also, see U.S. Department of Education, *Guidance: State Educational Agency Procedures for Adjusting Basic, Concentration, Targeted, and Education Finance Incentive Grant Allocations Determined by the U.S. Department of Education* (May 23, 2003). Available at [<http://www.ed.gov/programs/titleiparta/seaguidanceforadjustingallocations.doc>].

³³ U.S. Department of Education, Letter from Secretary of Education Margaret Spellings to Mississippi State Superintendent of Education Hank M. Bounds, dated Sept. 12, 2005. Available at [<http://www.ed.gov/policy/elsec/guid/secletter/050912.html>].

³⁴ Hold-harmless percentages are as follows: 95% for LEAs with 30% or more formula children; 90% for LEAs with 15% or more, but less than 30% formula children, and 85% for LEAs with less than 15% formula children.

concentration grant in one of the four previous years.³⁵ For LEAs that close for a full year, it is unclear whether the hold-harmless provisions would prohibit hold-harmless funds for the current year from being reallocated to other LEAs under Section 1126, especially, if a waiver were granted permitting an LEA to carry over more than 15% of their funds to the next year. This might limit the ability of states to reallocate Title I-A funds across affected LEAs as discussed in the previous bullet.

IDEA Provisions. The Secretary has also identified a number of IDEA-specific concerns. Several of these issues relate to various time lines. For example, the Texas Commissioner of Education requested extensions of the time line between a parent's consent for a child's evaluation and the determination of his or her eligibility for special education and the time line between the eligibility determination and the initial individualized education program (IEP) meeting.³⁶ Regarding the first time line, the Secretary noted that IDEA provides for state flexibility: the time between evaluation and eligibility determination is 60 days "or, if the State establishes a time frame within which the evaluation must be conducted, within such time frame" (Section 614(a)(1)(C)(i)(I)). The Secretary notes that ordinarily a state-determined alternative to the 60-day time line would apply to all LEAs in the state. "However, under the extraordinary and unprecedented conditions faced by Texas in dealing with the aftermath of Hurricane Katrina, it would be reasonable for the TEA [Texas Education Agency] to establish a different time line for completing evaluations of all children suspected of having a disability in districts enrolling a significant number of displaced students."³⁷ Regarding the deadline for the first IEP meeting (which is established in regulation as 30 days³⁸), the Secretary notes, "there is currently no legal authority to waive this time line."³⁹

Relevant Programs

The following section discusses the relevant federal programs that are most suitable for addressing the needs of students, schools, LEAs and states that have been affected by the recent hurricanes. A short description of the program, including the FY2005 appropriation are provided for each program. Possible legislative and funding options are also included where applicable.

³⁵ 34 CFR 200.71 and 200.73.

³⁶ Letter to the Honorable Shirley Neeley, Sept. 21, 2005, p. 3. Available online at [<http://hurricanehelpforschools.gov/letters/050921.html>].

³⁷ Ibid., p. 3.

³⁸ 34 CFR Section 300.343(b)(2). Note that the 30-day requirement is preserved in proposed IDEA regulations now under consideration. See FR v. 70, no. 118 (June 21, 2005), p. 35867 (Section 300.323(c)(1)).

³⁹ Letter to the Honorable Shirley Neeley, Sept. 21, 2005, p. 5. Available online at [<http://hurricanehelpforschools.gov/letters/050921.html>].

Education for Homeless Children and Youth. The Education for Homeless Children and Youth program is authorized by Title VII, Subtitle B of the McKinney-Vento Homeless Assistance Act (P.L. 100-77). The program provides formula grants to states to ensure that homeless children and youth have access to the same free, appropriate public education and the same services that are provided to other children.⁴⁰ Homeless children and youth must be given the opportunity to meet the same academic achievement standards to which all students are held. Participating states must agree to revise state laws, regulations, and policies that may act as barriers to homeless children receiving a free, appropriate public education. Each state must distribute at least 75% of its federal grant to LEAs to be used to provide supplementary educational services needed by homeless children and youth.

Under the McKinney Act, states are prohibited from educating homeless children in a separate facility, *except* under specific circumstances. Most applicable to disaster relief would be an exception that permits LEAs to group homeless children away from other children for a short period of time for health and safety emergencies or “to provide temporary, special, and supplemental services to meet the unique needs of homeless children and youths” (Section 723). Meeting the unique needs of a large number of students displaced from their homes and considered homeless as a result of an event such as a major disaster could result in an LEA placing these students in a separate facility if that would be an efficient and effective way to ensure their education needs were met for a short period of time. This grouping of a cohort of children evacuees appears to be allowed under the McKinney Act as an exception to the general prohibition against homeless student segregation. LEAs could invoke this authority without requiring additional congressional action, at least on a temporary basis.

LEAs serving large numbers of displaced students from the recent hurricanes have already used this authority to provide a free, appropriate education in separate facilities to meet the educational needs of these students. For example, the *Houston Chronicle* reported that the Houston Independent School District is opening two previously closed elementary school campuses to educate up to 1,350 students who have been displaced by Hurricane Katrina.⁴¹

The Education for Homeless Children and Youth program was funded at \$62.5 million in FY2005. The states are likely to have already distributed these funds to meet previously identified needs of the homeless. The thousands of students that are now considered homeless as a result of the recent hurricanes seem likely to need significant educational services in addition to those provided prior to the hurricanes.⁴²

⁴⁰ For additional information about this program and other federal programs for the homeless, see CRS Report RL30442, *Homelessness: Recent Statistics, Targeted Federal Programs and Recent Legislation*, coordinated by Maggie McCarty.

⁴¹ “HISD Enrollment Push Begins,” *Houston Chronicle*, Sept. 7, 2005. Available at [http://www.chron.com].

⁴² Funds provided under this program may be considered a duplication of benefits under the Stafford Act if funds are used to provide any of the same support services available under the Stafford Act.

IDEA and Homeless Children. The recent reauthorization of IDEA includes specific provisions for homeless children. In addition to cross-referencing the definition of “homeless children” in the McKinney-Vento Act, the act also requires states to find, identify, and evaluate all children who are in need of special education and related services. Homeless children are now explicitly included in this so-called child find requirement (Section 612(a)(3)(A)). IDEA provides extensive procedural safeguards to ensure the rights of children with disabilities and their parents. In most cases, parents exercise these rights for their children. As a result of the recent devastation, some parents of children with disabilities may have died or been separated from their children for extended periods of time. Current law requires that states have in place “procedures to protect the rights of the child [including homeless children] whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State” (Section 615(b)(2)(A)).⁴³

Fund for the Improvement of Education. The Fund for the Improvement of Education (FIE) is authorized by Title V, Part D of the ESEA. This program provides the Secretary of Education with discretionary authority to support nationally significant programs to improve education at the state and local levels and to help children meet challenging academic content and achievement standards. Funds may be distributed by grants to, or through contracts with, states, LEAs, IHEs, or other public or private entities. Awards may be made competitively or for any meritorious unsolicited proposal. Recipients of these funds may use them for, among other activities, any of the various purposes of the ESEA. The use of FIE funds for construction or remodeling generally is not authorized; however, FIE earmarks have been specified in appropriations bills for school repair and modernization.

The FIE is used as the basis to support various K-12 education proposals by the Administration, as well as earmark awards for a variety of K-12 education activities. In fact, earmarks for specific projects or localities have accounted for most of the annual FIE appropriation in recent years. The FIE appears to be suitable to provide educational services for victims of major disasters, and available for school construction and repair as well if legislative provisions are made for such activities in appropriations language.⁴⁴ The FY2005 appropriation for general FIE activities was \$257 million.⁴⁵

Impact Aid. The Impact Aid program, currently authorized by Title VIII of the ESEA, provides support to LEAs adversely affected by the presence of the federal

⁴³ Part C of IDEA provides services to infants and toddlers with disabilities and their families. The act requires that any state receiving Part C funds (currently all states) must make available “appropriate early intervention” to all infants and toddlers with disabilities and their families, including “infants and toddlers with disabilities who are homeless children and their families” (Section 634(a)).

⁴⁴ See the caveat on duplication of benefits under the discussion of the Stafford Act.

⁴⁵ Funds provided under this program may be considered a duplication of benefits under the Stafford Act if funds are used to provide any of the same support services available under the Stafford Act.

government.⁴⁶ For example, Section 8003 provides funds to LEAs serving children living on Indian lands or children who have a parent serving in the military with additional support available if these children also have disabilities. These funds are allotted to LEAs through formula grants.⁴⁷ In FY2005, the appropriation for Section 8003 was \$1.1 billion.

The Impact Aid program also provides funding for both a formula grant and competitive grant construction program under Section 8007. In FY2005, appropriations for Section 8007 were \$49 million. Of the total funds appropriated for this section, 40% are distributed to LEAs that receive funds through Section 8003 and meet specific criteria. The remaining funds are used to award competitive grants for emergency repairs and modernization. Emergency repair grants may be used to repair or renovate a facility due to health or safety hazards. Modernization grants may be used to alter a facility to alleviate overcrowding or to provide more modern services (e.g., telecommunications). Statutory language currently gives higher priority to emergency repair grants than to modernization grants, and requires emergency repair grants to be awarded based on the severity of the emergency. Construction grants may only be awarded to LEAs that are eligible to receive support under Section 8003. Several LEAs in Louisiana, Florida, Alabama, and Mississippi received Section 8003 grants for FY2004.⁴⁸

Innovative Programs. The Innovative Programs State Grants program is authorized by Title V, Part A of the ESEA. It is an education formula block grant program to states. The program is the only federal block grant provided specifically for K-12 education. Most federal education programs focus on targeting limited resources to specific student populations (e.g., Title I funds for disadvantaged students) or to areas with the greatest need (e.g., Impact Aid funds for LEAs adversely affected by the presence of the federal government). Unlike these types of federal education programs, funding provided through the Innovative Programs State Grants can be used to support any student population in any school.

The Innovative Programs State Grants has an extensive list of allowable uses of funds, including providing teacher training, technology activities, and supplemental educational services. The allowable uses of funds does *not*, however, specifically address the use of funds for disaster relief. Among its allowable uses of funds are activities that could aid in meeting the education needs of displaced students (e.g., support for mental health services), and students returning to their original schools

⁴⁶ Under P.L. 81-874, as amended by P.L. 89-313 in 1965, the Impact Aid program had the authority to assist LEAs that were affected by major or pinpoint disasters with current school expenditures and school construction. The authority was repealed when FEMA assumed responsibility for the repair or replacement of school facilities related to disaster relief in FY1992.

⁴⁷ For more information about the Impact Aid program, see CRS Report RL31885, *Impact Aid for Public K-12 Education: General Overview and Current Status*, by Rebecca R. Skinner and Richard N. Apling.

⁴⁸ Funds provided under this program may be considered a duplication of benefits under the Stafford Act if funds are used to provide any of the same support services available under the Stafford Act.

after having been displaced. It does *not*, however, authorize the use of funds for construction or repair. It does allow for the acquisition of instructional materials which may be useful to schools that were damaged by the recent hurricanes.

This program does not have a history of being used to provide disaster relief, possibly due to the reasons discussed above. Congress could act to alter the program to provide additional support to the areas affected by the hurricanes and serve students displaced as a result of the hurricanes by modifying the allowable uses of funds to better align them with education-related disaster relief needs. This change would probably need to be accompanied by increased appropriations, as appropriations for the program were substantially reduced in FY2005.⁴⁹ In addition, as this is a formula grant program, changes would need to be made to the funding distribution method to ensure that it is targeted to the states and LEAs most in need of disaster-related assistance.⁵⁰

Project SERV. Project SERV is authorized under the Safe and Drug-Free Schools and Communities Act ESEA Title IV-A, Subpart 2. This program was first proposed in FY1999 by the Clinton Administration to provide resources to school districts and communities that experienced a violent or traumatic crisis disrupting the learning environment, such as a school shooting. Project SERV was to act similarly to FEMA in its response to communities struck by hurricanes or other disasters, by making funds available to school districts to reestablish safe learning environments after a traumatic crisis. This program has not received an appropriation since FY2003; however, at present, a \$7.9 million unobligated balance remains for the program.⁵¹

Additional Options for Relief

If additional funds are appropriated to provide aid to states and LEAs affected by a major disaster, policies and procedures would need to be developed regarding how funds would be allocated and the authorized uses of such funds. A variety of options might be considered, as discussed below.

- Funds could be allocated under amended versions of existing programs, modified to limit eligibility to affected states and LEAs. Formula grant programs might be modified in a manner to direct funds to those entities serving displaced students or that suffered significant losses and are preparing to reopen to serve students in the future. For example, the Title I-A program might be modified, substituting students displaced by a major disaster for formula

⁴⁹ In FY2004, the appropriation for Innovative Programs was \$297 million. In FY2005, the appropriation was reduced to \$198 million.

⁵⁰ Funds provided under this program may be considered a duplication of benefits under the Stafford Act if funds are used to provide any of the same support services available under the Stafford Act.

⁵¹ Funds provided under this program may be considered a duplication of benefits under the Stafford Act if funds are used to provide any of the same support services available under the Stafford Act.

children, and then allocating supplemental funding under one or more of the formulas. Supplemental funding also could be allocated under existing discretionary grant programs, such as Title V-D-2 — Elementary and Secondary School Counseling Program. For example, eligibility for grants could be limited to LEAs serving significant numbers of students affected by major disasters.

- Funds could be allocated to affected states or LEAs on a per-pupil basis according to counts of displaced students as of a specified date, or according to a count of students served during a specified time period. Legislation would need to specify the authorized uses of funds and allocation procedures.
- Legislation could be enacted authorizing the Secretary to waive statutory and regulatory requirements that the Secretary is otherwise not permitted to waive, such as those relating to the allocation or distribution of funds to states, LEAs and other entities that the Secretary appears to be prohibited from waiving under ESEA Title IX-D (Section 9401(c)).
- Legislation could be enacted authorizing broader flexibility for the transferability or consolidation of funds than is currently provided for under ESEA Title VI.⁵² For example, affected states or LEAs might be granted authority to consolidate more of the federal funds they receive for purposes of serving displaced students, or may be granted flexibility in designating schools not otherwise eligible as school wide programs under Title I-A.

Issues: Elementary/Secondary Education and IDEA

The recent major disasters present some novel issues for states and LEAs receiving Title I-A funds and IDEA funds. Congress has anticipated some of these issues with the introduction of several legislative proposals (to be discussed), and other issues have been recognized by the Secretary, as evidenced in her general policy letters and in letters addressing specific states' concerns.⁵³ However, other issues remain to be addressed by federal, state, and local governments and by schools, teachers, parents, and students. The following section discusses some of the issues that have arisen in the aftermath of these recent hurricanes.

⁵² For a discussion of current ESEA Flexibility provisions, see CRS Report RL31583, *K-12 Education: Special Forms of Flexibility in the Administration of Federal Aid Programs*, by Wayne Clifton Riddle.

⁵³ These letters are available at [<http://hurricanehelpforschools.gov/letters/index.html>].

Funding

Several proposals have been introduced in the 109th Congress to provide federal funding to help offset the costs associated with reopening closed elementary and secondary schools and to support the education of displaced students following the recent Gulf coast hurricanes.⁵⁴ Some of the proposals would authorize the provision of direct or indirect federal aid to private and parochial schools that enroll displaced students in addition to aid for public schools. The Administration has proposed making funding available on a per-pupil basis to support the attendance of displaced students in both public and private schools. In the House and the Senate (H.R. 4097 and S. 1932 respectively), proposals have been considered that would use different methods to make federal funding available to support the education of displaced students in public and private schools.

Both the House and Senate proposals will be discussed in detail below; however, a key distinction between the two is the methods through which federal funds would be made available to schools. This is of particular concern with respect to religiously affiliated schools. There is ongoing debate over the appropriateness of using public funding to support the costs of enrolling students in private schools — especially religiously affiliated private schools. Two aspects of this debate are of primary concern: (a) the political feasibility of providing portable aid (i.e., “vouchers”) to students as part of a school choice program under which parents have some degree of control over directing the expenditure of funds on behalf of their children’s education; and (b) constitutional concerns that might be raised if public funding were to be provided directly to religiously affiliated schools, rather than indirectly, such as through voucher program.⁵⁵

IDEA

Many of the issues related to IDEA pertain to implementation of statutory provisions or ED policy. For example, IDEA requires the receiving LEA, in consultation with the parent, to continue to provide the child with a free appropriate public education comparable to services described in the child’s previous individualized education program (IEP) until the LEA, following the requirements of IDEA, develops a new IEP for the child (Section 614(d)(2)(C)). However, in communities that have been devastated by recent hurricanes, these records may be lost, or the staff who would ordinarily facilitate the records transfer may have been evacuated.

If IEPs are not available from LEAs in the affected areas, much of the responsibility may fall to parents for ensuring that displaced children receive special education services comparable to those provided prior to their relocation. The

⁵⁴ See for example, H.R. 3748, H.R. 3958, H.R. 4017, H.R. 4097, S. 1637, S. 1715, S. 1765, S. 1766, S. 1842, and S. 1904.

⁵⁵ For additional information regarding vouchers and school choice, see CRS Issue Brief IB98035, *School Choice: Current Legislation*, by David. P. Smole. For a discussion of Constitutional concerns regarding vouchers and aid to religiously affiliated schools, see CRS Report RL30165, *Education Vouchers: Constitutional Issues and Cases*, by Angie Welborn.

National Center for Learning Disabilities (NCLD) advises hurricane victims with children with disabilities to “be sure you tell the school that your child was receiving special education services at the previous school”⁵⁶ and to share a copy of the child’s IEP with the school. If the parent does not have a copy of the IEP (which is likely for those evacuated under emergency circumstances), the NCLD advises, “do your best to describe your child’s disability and the specialized services your child was receiving.” Under the best of circumstances, parents’ advocating for special education for their child is challenging; following a major disaster such advocacy could be especially difficult. There could be considerable delay before the child receives comparable services if the child’s parents are missing or dead.

As previously discussed, current law permits the Secretary to waive the MOE requirement for states that experienced a major disaster, such as the recent hurricanes. These states may spend less on special education this year than they did last year. At the same time, other states that have received dislocated students may have to increase special education spending. It is unclear whether those states would be required to maintain special education spending at higher levels. No statutory authority currently permits them to reduce spending in future years if significant numbers of children with disabilities leave the state to return home.⁵⁷

Federal funding for IDEA is another issue. Since the mid-1990s, funding for the IDEA Part B grants-to-states program (the largest IDEA state grants program) has increased rapidly (from \$2.3 billion in FY1995 to nearly \$10.6 billion in FY2005).⁵⁸ These increases have significantly closed the gap between actual appropriations and “full funding” for the program. The recent reauthorization provided specific authorization levels aimed at achieving estimated full funding in FY2011 (Section 611(i)). Proposed increases for FY2006 in the House and Senate bills provide for more modest increases than Congress has provided in recent years. These proposed increases, if enacted, would result in an FY2006 level that would be several billion dollars below the FY2006 target of \$14.6 billion set by P.L. 108-446. If Congress decides that significant budget cuts are necessary to pay for hurricane-related rebuilding, progress toward IDEA funding targets could fall even further behind. Indeed, funding for the IDEA Part B grants to states program might be cut for the first time in the program’s history.

⁵⁶ [<http://www.ld.org/Katrina>]

⁵⁷ Current law does provide an exception to LEA MOE if the enrollment of children with disabilities decreases (§613(a)(2)(B)(ii)).

⁵⁸ For a discussion of IDEA funding, see CRS Report for Congress RL32085, *the Individuals with Disabilities Education Act (IDEA): Current Funding Trends*, by Richard N. Apling.

Higher Education

Most of the federally funded postsecondary programs and activities are authorized by the Higher Education Act of 1965 (HEA), as amended. The programs and activities are primarily organized as follows: student financial aid, support services to help students complete high school and enter and succeed in postsecondary education, aid to strengthen institutions, and aid to improve K-12 teacher training at IHEs. ED's FY2005 appropriation legislation includes about \$16.4 billion for HEA discretionary authorities. This total excludes mandatory federal expenditures for the Federal Family Education Loans (FFELs) and Direct Loans (DLs). Students and their parents were estimated to have secured over \$58 billion in new loans with the help of these two federal programs in FY2005.

The following sections discuss the existing statutory and regulatory relief that are available to students, IHEs, and financial institutions that have been affected by a major disaster. The current regulatory authority primarily applies to all Title IV recipients and borrowers, IHEs, and financial institutions that are located in areas designated as federally-declared disaster areas.⁵⁹ The descriptions are arranged as follows: general provisions for all Title IV student aid programs for institutions and students are discussed first, followed by specific information for the relevant federal programs and program requirements that pertain to individuals or institutions affected by a major disaster. Each of the programs and the requirements are followed by possible legislative and funding options for responding to major disasters.

General Provisions for Institutions

Institutions that have closed because of a major disaster are permitted to establish a written agreement with another institution to enable a student to continue his/her academic program and continue to receive Title IV student aid. Section 668.5 of Title 34 of the Code of Federal Regulations (CFR) delineates the guidelines for an institution to establish such an agreement with both Title IV eligible and non-eligible institutions. In a General Distribution letter (hereafter, disaster relief letter) issued by ED, dated February 2004 (GEN-04-04), the Secretary strongly encouraged institutions to establish such agreements with other institutions in the case of major disasters.

Another problem that institutions affected by a major disaster may encounter pertains to the length of the academic year. Section 668.2 defines an academic year as, "a period that begins on the first day of classes and ends on the last day of classes or examinations and that is a minimum of 30 weeks of instructional time." Several of these institutions and the students that attend these institutions will not be able to satisfy this requirement. Further, failure to meet this requirement under normal

⁵⁹ Most of these authorities were enacted in response to the numerous hurricanes that occurred in Florida in 2003. Specifically, a General Distribution letter was issued by the Department of Education, dated Feb. 2004 (GEN-04-04), which provided guidance for IHEs for dealing with the affects of a major disaster. This document is available at [<http://ifap.ed.gov/dpcletters/attachments/GEN0404.pdf>].

circumstances results in the loss of Title IV eligibility.⁶⁰ In a letter issued on September 30, 2005, the Secretary stated that all IHEs in the Alabama, Louisiana, and Mississippi that were affected by Hurricane Katrina would be permitted to reduce their academic year from 30 weeks of instructional time to 26 weeks of instruction.⁶¹ The Secretary will continue to address this issue on a case-by-case basis for IHEs affected by Hurricane Rita.⁶²

The Secretary has the authority to waive documentation requirements for institutions that have lost student records as a result of the disaster. Although institutions are required to attempt to reconstruct financial aid records, they will not be penalized if they are unable to do so.

In addition to the aforementioned provisions, numerous requirements pertain to reporting the disbursement of Title IV funds and the reimbursement of Title IV funds based on student enrollment, attendance, and the institution's academic calendar. Most of these additional requirements pertain to credit balances, excess cash, financial and administrative capability, and student loan funds. In response to the recent hurricanes the Secretary has issued several waivers and provided policy guidance in many of these areas.⁶³ For example, the Secretary indicated that students who were selected for verification would not be penalized if they were unable to produce the required documentation as a result of the hurricane.

The following laws were passed to provide students and IHEs in the affected areas with additional relief: The Pell Grant Hurricane and Disaster Relief Act (P.L. 109-66), The Student Grant Hurricane and Disaster Relief Act (P.L. 109-67), and The Natural Disaster Student Aid Fairness Act (P.L. 109-86) (to be discussed). Collectively these laws provide the Secretary with greater authority to waive various requirements, primarily pertaining to administration of Title IV funds.

Section 479A of the HEA grants financial aid administrators (FAAs) the authority to use professional judgment in special circumstances. However, this judgment must be exercised on a case-by-case basis. Extending this authority so that

⁶⁰ When a recipient of Title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of Title IV grant or loan assistance (not including Federal Work-Study or the non-federal share of Federal Supplemental Educational Opportunity Grant (FSEOG) awards if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method) that the student earned as of the student's withdrawal date in accordance with paragraph (e) of Section 668.22. For additional information regarding the calculation, see CRS Report RL31926, *Institutional Eligibility for Participation in Title IV Student Aid Programs Under the Higher Education Act: Background and Reauthorization Issues*, by Rebecca Skinner.

⁶¹ The full text of the notice is available at [<http://www.ifap.ed.gov/eannouncements/0930HurricaneKatrinaEA6.html>].

⁶² The full text of the notice is available at [<http://www.ifap.ed.gov/eannouncements/0930HurricaneRitaEA2.html>].

⁶³ The full text of all of the notices are available at [<http://www.ifap.ed.gov/eannouncements/katrina.html>].

an institution's FAAs can establish a universal policy for any student affected by this disaster might be considered. This would eliminate the need for FAAs who are working with these students to evaluate each student individually. The Secretary issued policy guidance encouraging FAAs to use this authority to recalculate the expected family contribution for students affected by the hurricanes, however, FAAs must continue to utilize professional judgment on a case-by-case basis.⁶⁴

50% Rules. The HEA contains a series of three provisions, collectively known as the 50% rules, governing the use of telecommunications and correspondence courses to provide educational programs.⁶⁵ The first rule requires that telecommunications courses be considered correspondence courses if the sum of telecommunications and correspondence courses equals or exceeds 50% of all courses offered by the institution (Section 484(l)). The two remaining rules limit the percentage of courses an institution may offer by correspondence to 50% or fewer and limit the percentage of students that may be enrolled in correspondence courses to less than 50% (Section 102(a)). If an institution violates either the second or third rule, it loses its eligibility to participate in HEA, Title IV student financial aid programs.

As a result of the recent hurricanes, many IHEs have been forced to close for at least a semester, if not a year or longer. Students attending these institutions have either enrolled in another IHE that is able to provide educational programs or postponed their postsecondary education. One possible strategy for IHEs affected by the recent hurricanes that want to begin providing educational services as quickly as possible is to offer courses online. While it is unknown how many courses a given institution would be able to offer, how many students would be interested in and have access to the technology needed to participate, or how much it would cost in terms of resources and time to establish or expand online programs, it is clear that these institutions could be in violation of the 50% rules if all or most of their educational services were provided online.

The Secretary does not currently have the authority to waive the 50% rules for all IHEs.⁶⁶ An across-the board waiver of these rules would require a statutory

⁶⁴ The full text of the notice is available at [<http://www.ifap.ed.gov/eannouncements/0916HurricaneKatrinaInfo5.html>].

⁶⁵ For more information about distance education or the 50% rules, see CRS Report RL32490, *Distance Education and Title IV of the Higher Education Act: Policy, Practice, and Reauthorization*, by Jeffrey J. Kuenzi, Rebecca R. Skinner, and David P. Smole.

⁶⁶ The 109th Congress is working to reauthorize the HEA. Both the House bill (H.R. 609) and the Senate bill (S. 1614) await floor action having been ordered to be reported by the relevant committees. Both bills contain provisions that would eliminate the rule that requires telecommunications courses to be considered correspondence courses under certain circumstances and would eliminate the restrictions on the number of courses that could be offered through telecommunications and the percentage of students that could be enrolled in telecommunications courses. Under both bills, the 50% rules would continue to apply to correspondence courses.

change.⁶⁷ However, included in the HEA Amendments of 1998 was the creation of a Distance Education Demonstration Program (DEDP). IHEs participating in this program are eligible to have the 50% rules as well as other statutory requirements waived. IHEs that have been affected by the recent hurricanes that are not currently participating in the DEDP could be provided with an emergency application to participate in the DEDP, which would then allow them to have the 50% rules waived. The number of institutions that may participate in the DEDP is capped at 50 institutions, systems of institutions, or consortia of institutions.⁶⁸ If the number of new applicants and the number of existing applicants reached this cap, Congress could have to act to increase the number of eligible participants.

General Provisions for Students

Section 479A of the HEA grants FAAs the authority to utilize discretion on a case-by-case basis in special circumstances. Special circumstances are defined as “conditions that differentiate an individual student from a class of students rather than conditions that exist across a class of students.” This authority would not permit the FAA to adjust the financial aid award for all students as a group; however, it could be done on an individual basis. The February 2004 disaster relief letter strongly encouraged FAAs to utilize professional judgment to determine the financial need of students affected by disasters, but maintained that it must be done on an individual basis.

In addition, the disaster relief letter stated that any financial assistance (federal, state, and other) that is received by a victim of a major disaster shall not be used in the federal need analysis system to calculate a student’s expected family contribution.

To be eligible for Title IV student aid, students must maintain satisfactory academic progress while enrolled in postsecondary education. Satisfactory progress is delineated by policies developed by each participating institution of higher education. If a student fails to meet an institution’s requirement for satisfactory progress and the failure to do so is based on a special circumstance, the institution can waive this requirement (Section 668.34).

The following are possible legislative proposals to provide additional relief to postsecondary students who have been affected by the recent hurricanes:

⁶⁷ H.R. 3975 would provide the Secretary of Education broad waiver authority that could be used to temporarily suspend the 50% rules in response to IHEs and students affected by the recent hurricanes. Similarly, S. 1715 proposes to temporarily eliminate the 50% rules in response to the recent hurricanes.

⁶⁸ During the first year of the DEDP, the Secretary was authorized to select up to 15 institutions, systems, or consortia (Section 486). For the third year of the program, the Secretary was authorized to select up to an additional 35 institutions, systems, or consortia. Currently 24 participants are in the program, accounting for 100 institutions (These data were provided by ED and are available online at [<http://www.ed.gov/programs/disted/index.html>].)

- Generally, Title IV aid received by a student must be returned when a student withdraws prior to completing the requisite amount of time in a semester or quarter. Many of these students may have received a portion of their federal student aid award but may not have satisfied the attendance requirement, and would therefore be required to return a portion of the Title IV funds they received. In some instances, a student may have expended some, if not all, of their award, and may be unable to return or repay their award. Students who owe a refund are not able to receive additional federal student aid until all aid owed is repaid. At present, the Secretary does not have the authority to waive the return of these funds.
- Although the expected family contribution (EFC) is based on the prior year's income, families must use existing resources to pay this amount. Many families may no longer have the necessary resources to pay their EFC for this academic year. Options to allow the EFC for students affected by the disaster to be recalculated might be considered.
- In addition, adjusting next year's EFC calculation might be considered as well. Most people will have worked for two-thirds of the year, and may have substantial earnings during this period that could affect the calculation of their EFC for the next award year.

Relevant Programs

The following section includes short descriptions of the relevant federal higher education programs that will most likely impact the postsecondary students and IHEs that have been affected by the hurricanes. Each program description includes the FY2005 appropriation and where applicable, legislative and funding options to provide additional relief. With the exception of the fund for the improvement of postsecondary education (FIPSE) (see discussion below), all of the programs discussed are authorized by Title IV of the HEA.

Pell Grants. The Pell Grant program provides grants to financially needy undergraduate students. In any year, federal funding is available to ensure that all eligible students attending eligible institutions receive a Pell Grant. Pell Grants are portable, that is, the grant aid follows students to the eligible postsecondary education institution in which they enroll. The size of the grant up to the annual appropriated maximum amount is based, principally, on the financial resources that students and their families are expected to contribute toward postsecondary education expenses. For FY2005, the appropriated maximum grant is \$4,050.⁶⁹ The FY2005 appropriation for the Pell Grant program is \$12.3 billion.

P.L. 109-66, the Pell Grant Hurricane and Disaster Relief Act (to be discussed), grants the Secretary authority to waive the amount of Pell Grant aid required to be returned by students who withdrew or whose attendance was interrupted due to a

⁶⁹ For additional information about the Pell Grant program, see CRS Report RL31668, *Federal Pell Grant Program of the Higher Education Act: Background and Reauthorization*, by Charmaine Mercer.

major disaster. To date, no policy guidance or regulations regarding this provision have been placed on ED's website. The existing program regulations for the Pell Grant program do not provide a significant amount of guidance on this provision for IHEs participating in the federal Pell Grant program. The disaster relief letter indicates that the Secretary will work with institutions that have been affected by a major disaster with respect to the reporting deadlines and disbursement records. However, there is no reference to Pell Grant recipients who have been affected by a disaster.

Campus-Based Student Aid Programs. Three smaller Title IV student aid programs — Federal Supplemental Educational Opportunity Grants (FSEOG), Federal Work-Study, and Federal Perkins Loans — are collectively known as the campus-based programs because their funds are allocated to postsecondary institutions for award to students.⁷⁰ Institutions must match a portion of the federal allocation under each of these programs.

These funds are also subject to the return of Title IV funds requirements previously discussed. Unlike other Title IV programs, the HEA requires the Secretary to reallocate any unused funds in excess of 10% of the total amount received that a participating IHE returns. In addition, any IHE that returns more than 10% of their campus-based aid will have their following year's allocation reduced by the amount returned. However, the HEA does grant the Secretary authority not to impose this provision if enforcing it would be against the interest of the program. The disaster relief letter indicated that the Secretary would consider an institution's inability to expend all of its campus-based aid due to a major disaster as an acceptable reason for a waiver. The IHE is required to submit a request for this waiver.

Because the campus-based programs are unique in that the programs and the funds are institutionally based, if a student who is affected by the disaster transfers to another institution that does not participate in the campus-based programs he/she will not be able to receive funds from the federal campus-based programs. Options that allow IHEs to transfer some of their campus-based monies to IHEs with which they have established written agreements might be considered.

Both P.L. 109-67, the Student Grant Hurricane and Disaster Relief Act, and P.L. 109-86, the Natural Disaster Student Aid Fairness Act (both to be discussed), grant the Secretary waiver authority with respect to the campus-based programs. Specifically, P.L. 109-67 grants the Secretary authority to waive the amount of Title IV aid required to be returned because the student withdrew or his/her attendance was interrupted because of the hurricane. P.L. 109-86 gave the Secretary authority to waive various requirements for the campus-based programs. One provision in particular requires the Secretary to waive the institutional matching requirement for IHEs affected by the hurricane for the 2004-2005 and 2005-2006 award years. Additionally, the Secretary is required to reallocate unexpended campus-based

⁷⁰ For additional information about the federal campus-based programs, see CRS Report RL31618, *Campus-Based Student Financial Aid Programs Under the Higher Education Act*, by David P. Smole.

program funds to IHEs in affected areas or to those IHEs that enrolled eligible students who were affected by the hurricane.⁷¹

Federal Work-Study. Institutions that participate in the Federal Work-Study program (FWS), a component of the campus-based student aid programs, are generally required to use at least 7% of the total FWS funds for students employed in community service. Comparable to what happens for campus-based programs at-large, if an institution fails to expend the 7% and returns the excess, the Secretary has the authority to reduce the IHEs' allocation for the following year by the amount returned. Again, similar to the campus-based programs at-large, the disaster relief letter indicated that the Secretary would waive this requirement for any institution that is not able to expend the requisite funds due to the disaster. The FY2005 FWS appropriation was \$990 million.

Federal Perkins Loan Program. The Federal Perkins Loan program is another component of the campus-based student aid programs. The Secretary has the authority to permit any borrower who had an "in-school" status at the time of the major disaster to maintain this status during the period of the disaster-related non-attendance. Further, this status does not impact a borrower's grace period (Section 674.31). The FY2005 appropriation was \$66 million.⁷²

Borrowers who are in repayment status can be granted a forbearance if the borrower is not able to continue making timely payments as a result of a major disaster. The Assistant Secretary, Sally Stroup, issued a notice, dated November 1, 2005, stating that all federal loan borrowers in the FFEL, DL, and Perkins loan programs who live in an area designated for disaster assistance by FEMA will automatically receive a loan-payment forbearance until February 28, 2006.⁷³ It is not clear from the notice if the interest will continue to accrue during this period and if this forbearance period would be counted toward a borrower's three-year maximum limit on loan repayment forbearance. Congress might consider not counting this forbearance against the three-year total forbearance allowed to provide borrowers with additional relief.

Loans: Federal Family Education Loans and Direct Loans. The federal government operates two major student loan programs: the Federal Family Education Loan program (FFEL) and the William D. Ford Direct Loan program (DL). The FFEL program insures and subsidizes loans that private lenders make to students or their parents to help them meet the costs of postsecondary education. FFELs are made by private lenders and are available to undergraduate and graduate students, and their parents. Certain types of FFELs are need-based, others are not.

⁷¹ The Secretary has issued guidelines for reallocating funds to IHEs that enrolled eligible students who were affected by the hurricanes. The *Federal Register* notice (November 7, 2005, Volume 70, Number 214) indicated that the guidelines for IHEs in affected areas would be forthcoming. The notice is available at [<http://www.ifap.ed.gov/fregisters/FR11072005.html>].

⁷² This represents the amount for loan cancellations.

⁷³ The full text of the notice is available at [<http://www.ifap.ed.gov/eannouncements/1101HurricaneKatrinaEA07.html>].

Several types of FFEL program loans are available: federal need-based subsidized Stafford loans (under which the government pays the interest while the borrower is in school, during a grace period or deferment); unsubsidized Stafford loans; federal PLUS loans (for parents of undergraduate students); and federal consolidation loans. A common feature of all these loans is that the federal government guarantees lenders against loss through borrower default, death, permanent disability, or, in limited instances, bankruptcy. Unlike FFEL, DLs are made by the federal government to students through their schools, thus eliminating the need for private capital and the guaranty agencies.⁷⁴ Schools may serve as direct loan originators or the loans may be originated as well as serviced by contractors working for ED. Loan terms and conditions for DLs are generally the same as those in the FFEL programs.⁷⁵ Approximately \$57 billion in loan aid was made available in FY2005.

The waiver requirements for both loan programs are comparable to those discussed for the Perkins Loan program, except that the disaster-related forbearance period is not counted against the student. The other waivers for the loan programs pertain to institutional reporting requirements. Specifically, the Secretary indicated that waivers for the submission of disbursement records, confirmation reports, and promissory notes would be handled on a case-by-case basis.

The following options might be considered to provide student loan borrowers with some additional relief during this time:

- Providing student borrowers in repayment a deferment rather than a forbearance might also be considered. Although this option would add costs to the student aid program because the government would subsidize the interest on subsidized Stafford loans during this period and participating IHEs would subsidize the interest for Perkins loans, it would also provide these individuals with added relief.
- Student aid recipients, especially loan borrowers, are required to enroll for a certain amount of credit hours per semester/quarter to maintain eligibility and to avoid repayment. For example, once a loan borrower drops below half-time enrollment status, he/she goes into repayment. Many of the individuals affected by this disaster may not enroll during this semester/quarter or the following one as they try to rebuild their lives. As a result, these students would be required to begin repaying their loans. Waiving this requirement for student aid recipients affected by the disaster might be considered.

⁷⁴ Guaranty agencies are state agencies created by state governments, or private nonprofit agencies operating only within a state or nationally. Each state has a guaranty agency selected to serve as the “designated” guarantor of FFELs for students going to schools in the state or state residents going to schools elsewhere.

⁷⁵ For additional information about the federal student loan programs see, CRS Report RL30655, *Federal Student Loans: Terms and Conditions for Borrowers*, by Adam Stoll.

Fund for the Improvement of Postsecondary Education. The Fund for the Improvement of Postsecondary Education (FIPSE) is authorized by Title VII, Part B of the HEA.⁷⁶ This program provides the Secretary with discretionary authority to support projects to improve postsecondary education opportunities. Funds may be distributed by grants to, or through contracts with, IHEs and other public and private nonprofit institutions and agencies. Awards may be used for various activities such as the reform, innovation, or improvement of postsecondary education. Current priorities of ED include improvement of postsecondary education through better teacher preparation; promotion of innovative curriculum and instruction from college preparation through graduate levels; increased cost-effectiveness of postsecondary instruction and operations; and new methods of ensuring equal access to postsecondary education, especially for under-represented students. The use of FIPSE funds for construction or remodeling generally is not authorized; however, FIPSE earmarks have been specified for the acquisition of technology, furnishings, and equipment.

FIPSE is used as the basis to support various postsecondary education proposals by the Administration, as well as earmark awards for a variety of postsecondary education activities. In fact, earmarks for specific projects or localities have accounted for most of the annual FIPSE appropriation in recent years. The FIPSE appears to be suitable to provide postsecondary educational services for victims of major disasters, and available for postsecondary construction and repair as well if legislative provision were made for such activities in appropriations language.⁷⁷ The FY2005 appropriation for FIPSE activities was \$163 million.

Department of Labor Employment and Job Training Programs

The Workforce Investment Act of 1998 (WIA) P.L. 105-220 (29 U.S.C. 2811 et seq.) is the country's major job training legislation. It authorizes employment, training, and related services through a variety of programs.⁷⁸ Of special interest to workers affected by major disasters are the youth, adult, and dislocated worker programs. The youth program provides services to low-income individuals between the ages of 14 and 21; the adult program provides services to individuals 18 years of age and older; and the dislocated worker program provides services to workers with

⁷⁶ For additional information, please see CRS Report RS21653, *Fund for the Improvement of Postsecondary Education: Background and Funding*, by Bonnie F. Mangano.

⁷⁷ See the caveat on duplication of benefits under the discussion of the Stafford Act.

⁷⁸ All WIA programs operate on a July 1 to June 30 program year, i.e., appropriations for FY2005 are for Program Year 2005, which is from July 1, 2005, through June 30, 2006. The authorization for WIA programs expired on Sept. 30, 2003; however, Congress has continued to fund the programs through annual appropriations. For more information on WIA, see CRS Report RS20244, *Job Training Under the Workforce Investment Act: An Overview*, and CRS Report RL32778, *The Workforce Investment Act of 1998 (WIA): Reauthorization of Job Training Programs*, both reports by Ann Lordeman.

an established work history who have lost their jobs and who are not likely to find new jobs in their former industries or occupations.

Only the youth program requires individuals to be low-income to receive services. However, if funds for the adult programs are limited, as determined by the local workforce investment board (WIB), priority for intensive and training services must be given to recipients of public assistance and other low-income individuals. Of particular note to youth and adults affected by the recent hurricanes, homeless persons as defined under subsections (a) and (c) of Section 103 of the McKinney-Vento Act,⁷⁹ P.L. 100-77, are automatically considered to be low-income.

For FY2005, \$986.3 million was appropriated for the youth program, \$896.6 million for the adult program, and \$1.5 billion for the dislocated worker program. Of the funds appropriated for the dislocated worker program, approximately 80% are for formula grants to states and 20% are for the Dislocated Worker National Reserve.⁸⁰ All of the funds appropriated for the youth and adult programs are for formula grants to states, the majority of which are allotted to local areas.⁸¹

WIA Waivers

Waivers Under WIA Section 189(i)(4), the Secretary of Labor may, at the request of the Governor, waive for a state or a local area various statutory and regulatory WIA provisions. On September, 15, 2005, DOL issued a training and employment guidance letter on WIA, "Waiver Flexibility for Hurricane Katrina Recovery." This letter provides a specific list of WIA provisions for which states affected by the Hurricane may want to request waivers. Some of the WIA provisions have been waived in the past and some are new provisions that could be waived under existing statutory waiver authority.⁸²

⁷⁹ Under these provisions a homeless person is an individual who lacks a fixed, regular, and adequate nighttime residence; a person who has a nighttime residence that is a supervised publicly or privately operated shelter designed to provide living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A homeless individual does not include any individual imprisoned or otherwise detained pursuant to an act of the Congress or a state law (42 U.S.C. 11302).

⁸⁰ The Dislocated Worker National Reserve consists primarily of National Emergency Grants (NEGs) which provide employment and training assistance to workers affected by major economic dislocations, such as plant closures, mass layoffs or disaster relief employment. For more information on NEGs and disaster relief employment, see [<http://www.doleta.gov/Katrina/docs/NEG%209-13-05.swf>].

⁸¹ For allocations for each state's formula grants for youth, adult and dislocated worker activities, see [<http://www.doleta.gov/budget/statfund.cfm>].

⁸² The training and employment guidance letter is available online at [<http://wdr.doleta.gov/directives/attach/TEGL5-05.pdf>].

Youth

Services to youth must be provided through grants to providers made on a competitive basis. Services may include (1) tutoring, study skills training, and instruction, leading to completion of secondary school, including dropout prevention strategies; (2) alternative secondary school services; (3) summer employment opportunities that are directly linked to academic and occupational learning; (4) paid and unpaid work experiences, including internships and job shadowing; (5) occupational skill training; (5) supportive services; and (6) comprehensive guidance and counseling, which may include drug and alcohol abuse counseling and referral. At least 30% of the funds allocated to local areas must be spent on youth activities for out-of-school youth.

Adults and Dislocated Workers

Three levels of services are associated with adult and dislocated worker programs. Core services, the first level of services, are provided through one-stop centers (see discussion below). Core services include outreach, intake, and orientation to services available under the one-stop system; job search and placement assistance; labor market information that identifies job vacancies, skills necessary for occupations in demand, and employment trends; initial assessment of skills and needs; information on available services and programs; and follow-up services to assist in job retention.

Intensive services are the second level of services. They are available to: (1) unemployed adults who have received at least one core service, are unable to obtain employment through core services and need intensive services to obtain employment; and (2) employed adults who have received at least one core service and need intensive services to obtain or retain employment that leads to self-sufficiency. There is no federally required minimum time period for participation in core services before receiving intensive services. Intensive services include comprehensive assessments, development of individual employment plans, group and individual counseling, case management, and short-term prevocational services.

Training services are the third level of services. They are available to adults who have received at least one intensive service; have been unable to obtain or retain employment through such services; have the skills and qualifications to successfully participate in a selected training program; select training programs that are directly linked to employment opportunities in the local area and are unable to obtain other grant assistance, including Pell Grants; or need assistance above the levels provided by such other grants.

There is no federally required minimum time period for participation in intensive services before receiving training services, although the period of time spent in intensive services should be sufficient to prepare the individual for training or employment. Training includes occupational skills training, on-the-job training, entrepreneurial training, skill upgrading, job readiness training, and adult education and literacy activities in conjunction with other training. Training services are to be provided primarily through “individual training accounts.” The purpose of individual

training accounts is to provide individuals with the opportunity to choose training courses and providers. States may enter into agreements, on a reciprocal basis, to permit eligible providers of training services in a state to accept individual training accounts provided in another state. The one-stop operator is responsible for arranging payment to the training provider.

Local areas can decide whether or not to provide supportive services, such as transportation and child care. If they do provide them, they would be available to individuals who are participating in core, intensive, or training services, and who were unable to obtain them through other programs.

One-Stop Centers

Adults and dislocated workers, and in some cases youths, receive WIA services through a coordinated service delivery system called the “one-stop” system. Each one-stop system in a local area must include at least one physical center, which may be supplemented by affiliated sites. One-stop centers provide services such as job search and placement assistance, determination of eligibility for WIA training, information on providers of WIA youth activities, and information regarding filing claims for unemployment compensation.⁸³

To further assist workers and employers affected by the recent hurricanes, DOL has established a job bank⁸⁴ to assist individuals seeking new, full-time employment either in their home state or in a new state; individuals wishing to assist in the clean-up and rebuilding efforts through temporary employment; and, employers who want to list jobs supporting hurricane recovery efforts or want to hire workers affected by the hurricane.

Legislative Proposals Addressing Education and Training

This section reviews major legislation that addresses education and training issues related to the recent hurricanes in the Gulf region. Bills discussed include both those that have received legislative action and those introduced by committee and subcommittee Chairmen and ranking minority members of either the House Education and the Workforce Committee or the Senate Health, Education, Labor and Pensions Committee. Currently, there are five bills that meet these criteria (P.L. 109-66, P.L. 109-67, P.L. 109-86, S. 1764, and S. 1932).

⁸³ For information on the location of one-stop centers, see America’s Service Locator at [<http://www.servicelocator.org/>]. For specific information on the status of one-stop centers located in areas affected by Hurricane Katrina, see [http://www.servicelocator.org/hurricane_katrina_info.htm].

⁸⁴ Please see *Katrina Recovery Job Connection Site*, at [<http://www.jobsearch.org/katrinajobs>].

P.L. 109-66. H.R. 3169 was introduced on June 30, 2005, by Representative Ric Keller (FL), as part of the amendments to the Higher Education Act of 1965, and became law on September 21, 2005. The Pell Grant Hurricane and Disaster Relief Act grants the Secretary authority to waive the amount of grant aid required to be returned by students who withdrew or whose attendance was interrupted for students who resided in, were employed in, or attended an IHE in an area that had been declared a major disaster by the President in accordance with Section 401 of the Stafford Act.

P.L. 109-67. H.R. 3668 was introduced on November 7, 2005, by Representative Bobby Jindal (LA) as part of the amendments to the Higher Education Act of 1965 — and became law on September 21, 2005 (P.L. 109-67). The Student Grant Hurricane and Disaster Relief Act grants the Secretary authority to waive the amount of student aid required to be returned by students who withdrew or whose attendance was interrupted for students who resided in, were employed in, or attended an IHE in an area that had been declared a major disaster by the President in accordance with Section 401 of the Stafford Act. This pertains to all non-Pell Grant aid authorized under Title IV of the HEA.

P.L. 109-86. H.R. 3863 was introduced on September 22, 2005, by Representative Bobby Jindal (LA) and become public law on October 7, 2005 (P.L. 109-86). The Natural Disaster Student Aid Fairness Act authorizes the Secretary of Education to waive certain requirements for the campus-based financial aid programs for IHEs affected by Hurricane Katrina and Hurricane Rita. Specifically the Secretary must waive the institutional matching requirement for IHEs that are located in areas affected by the recent hurricanes, for academic years 2004-2005 and 2005-2006. For IHEs that enroll students affected by the hurricanes, the Secretary may waive the institutional matching requirements for academic years 2004-2005 and 2005-2006. Further, the Secretary is directed to waive certain provisions pertaining to the reallocation of campus-based funds so that unused funds returned by IHEs to the Secretary will be reallocated to IHEs affected by the hurricanes; and to prevent the affected IHEs from having future allocations reduced for returning more than 10% of their funds from the previous award year. Finally, the Secretary is granted authority to waive provisions of law or to modify existing statutory or regulatory procedures related to the reallocation of funds to ensure that assistance is available to students at affected IHEs.

H.R. 3690. H.R. 3690 was introduced by Representative George Miller (CA) on September 7, 2005 and referred to the House Subcommittee on 21st Century Competitiveness on October 12, 2005. The Katrina College Student Relief Act would authorize relief with respect to federal student aid provided under Title IV of the HEA for students who were residing in, employed in, or attending an IHE located in an area declared a major disaster under Section 401 of the Stafford Act, or who were dependent students whose parents were residing or employed in such an area. The bill would authorize the Secretary to waive the amount of federal student aid that eligible students who withdraw from school during a payment period or period of enrollment after commencing attendance would otherwise be required to return under HEA, Section 484B. The bill would authorize student loan deferments of up to six months for eligible students who borrowed under the FFEL, DL, and the Perkins Loan programs. Finally, the bill would require the Secretary to recalculate EFCs for

eligible students for the current and ensuing academic years in instances where their income or assets, or the income or assets of their family, were affected by the declared disaster.

H.R. 4048. H.R. 4048 was introduced by Representative George Miller (CA) on October 7, 2005, and referred to the House Education and the Workforce Committee on the same day. The Gulf Coast Hurricanes Student and School Relief Act would establish several programs to assist public schools affected by Hurricane Katrina and Hurricane Rita. The bill would authorize the Secretary to issue grants to local education agencies to facilitate with reopening public schools and re-enrolling students in the affected areas. Among other things, the funds could be used to recover and replace data, damage assessment and refurbishment, rental of portable classrooms, and, construction, modernizing and repairing public school facilities. Eligible LEAs would receive \$8,314 per relocated student and 40% of the average per pupil expenditure for the state for children receiving services under Part B of IDEA.

H.R. 4097. H.R. 4097 was introduced by Representative John Boehner (OH) on October 20, 2005, and referred to the House Education and the Workforce Committee on the same day. The Family Education Reimbursement Act of 2005 would establish a federal Family Education Reimbursement Account Program under which parents of students displaced by Hurricanes Katrina or Rita would be able to establish accounts into which federal funds would be deposited for purposes of reimbursing public and private schools for the costs of educating their children. Parents of displaced students would be able to establish accounts for children aged 4 and older who have not yet completed the 12th grade. Under the program, the Secretary would contract with a non-governmental entity to develop a national system through which parents would register their children (via the Internet or a toll-free telephone number) to establish accounts. Federal funds would be deposited into these accounts and subsequently, at the request of the students' parents, drawn down by public or private schools to reimburse them for the costs of educating the student. An amount up to the lesser of \$6,700 or the actual cost to the school for educating the displaced student would be made available for each student (\$8,200 for students served under Part B of IDEA). Funds paid through student accounts would be considered assistance to students and would not be considered assistance to the preschool or school that enrolled the student. On October 27, 2005, the House Committee on Education and the Workforce held a markup pursuant to H.Con.Res 95, the Budget Resolution for Fiscal Year 2005, and the committee rejected the proposal by a vote of 21-26.

S. 1715. S. 1715 was introduced by Senator Michael Enzi (WY) on September 19, 2005. The Child Care Disaster Assistance Act of 2005, would provide assistance for students, educational institutions, and individuals with disabilities affected by Hurricane Katrina. The provisions that pertain to elementary and secondary education would do the following: make grants to LEAs for supplemental educational services or additional programs and activities for displaced or affected students; make payments to LEAs in Louisiana, Mississippi, and Alabama to restart school operations; and (3) delay applicability of ESEA teacher qualification requirements to Alabama, Louisiana, and Mississippi and their LEAs due to exceptional or uncontrollable circumstances. Grants would be made to SEAs, which then make

subgrants to LEAs. In determining whether to award a payment to an LEA, the SEAs should consider the number of school-aged children served by the LEA during the preceding academic year, the severity of the impact of the hurricane on the LEA, and the severity of need in the LEA. The higher education provisions would grant the Secretary various waiver authorities with respect to the administration of the Title IV student aid programs. Specifically, it would require: the Secretary to waive the amount of Title IV student aid that a student would be required to return due to his/her attendance being interrupted by Hurricane Katrina; provide IHEs in the affected areas an extension until July 1, 2010, to return Title IV grant funds in accordance with Section 484B; provide deferment status until June 30, 2006, for an affected student who does not re-enroll this academic year; and provide the Secretary authority to waive requirements to enable her to transfer work-study funds from an affected IHE to an IHE that enrolls an affected student. The bill was read for a second time on September 19, 2005 and placed on Senate Legislative Calendar (Calendar No. 213).

S. 1764. S. 1764 was introduced by Senator Kay Bailey Hutchinson (TX) on September 22, 2005, and would provide for the continued education of students affected by Hurricane Katrina. The bill would authorize the Secretary of Homeland Security to transfer funds from FEMA's Disaster Relief Fund to ED. ED would be permitted to use the funds to support activities of educational agencies authorized by federal law. Funds could also be used to meet the educational needs of students affected by Hurricane Katrina, specifically to pay for personnel providing instructional services, pay for operational costs, and purchase materials and equipment needed to serve these students. The Secretary of Education would verify that an immediate need exists to provide this assistance and that funds to support these activities are not available from other federal sources. The bill would require the notification of the House and Senate Appropriations Committees three days in advance of the transfer of funds. Funds transferred to ED would have to be obligated by September 30, 2006. The bill was passed by unanimous consent in the Senate on September 22, 2005, and sent to the House for consideration.

S. 1904. S. 1904 was introduced by Senator Lamar Alexander (TN) on October 20, 2005. The Hurricane Katrina Elementary and Secondary Education Recovery Act would authorize temporary emergency impact aid⁸⁵ for displaced students. Under this program, the Secretary would make emergency impact aid payments to SEAs, which in turn would provide funds to LEAs⁸⁶ and BIA-funded schools for the instruction of students displaced by Hurricane Katrina who are enrolled in public schools, and for payment into student accounts established on behalf of students enrolled in non-public schools for whom tuition and fees have already been waived or reimbursed. An amount up to \$6,000 would be made available per displaced student (and up to \$7,500 would be made available per displaced student served under IDEA, Part B), except that with regard to depositing funds into student accounts, no more than the cost of tuition and fees charged at the non-public school

⁸⁵ Impact aid that would be provided under S. 1904 is different from aid for the education of federally connected students provided through the Impact Aid program authorized under Title VIII of the ESEA.

⁸⁶ In Louisiana and Mississippi, the SEA would carry out the activities of LEAs.

would be paid. The bill was read for a second time on October 21, 2005, and placed on the Senate Legislative Calendar under General Orders (Calendar No. 253).

S. 1932. S. 1932 was introduced by Senator Judd Gregg (NH) on October 27, 2005. The Deficit Reduction Omnibus Reconciliation Act of 2005 provides reconciliation instructions pursuant to H.Con.Res 95, the Budget Resolution for Fiscal Year 2006. The bill contains numerous provisions that pertain to reconciliation, reauthorization of the HEA, and providing financial relief to students and institutions affected by the recent hurricanes. Specifically, S.Amdt. 2352 to S. 1932 would make emergency impact aid payments in a manner comparable to that previously discussed for S. 1904. S. 1932 also contains the Hurricane Katrina Higher Education Recovery Act which would grant the Secretary of Education additional waiver authority for certain HEA provisions pertaining to students and IHEs affected by Hurricane Katrina. Specifically, affected students and IHEs in affected areas that received Title IV funds for the 2005-2006 award year shall not be required to return these funds. On November 3, 2005, the bill was passed by the Senate by a vote of 52-47.

Administration's Proposal

In the weeks following Hurricane Katrina, members of the Administration made several speeches offering proposals for students, parents, schools, and LEAs in the affected areas; however, the details of the proposals are limited. This section briefly discusses the Administration's proposals for providing aid to students and institutions in affected areas.

Elementary and Secondary Education

The Administration has provided the most detail with respect to their proposal for relief to parents and education facilities affected by the recent hurricanes. Testimony given by Assistant Secretary Johnson before the Senate Education and Early Childhood Development Subcommittee indicated that the Administration is requesting \$1.9 billion to reimburse school districts that have received students from affected areas, and to assist those schools that were affected by the hurricane with reopening.⁸⁷ Specifically, Assistant Secretary Johnson stated that direct grants would be provided to any district that enrolls more than 10 displaced students during the 2005-2006 school year. Further, they propose to pay each district 90% of the state's average per-pupil expenditure, up to \$7,500.

The Administration also proposed funding for students who attend private schools. In the same testimony, the Assistant Secretary stated, "[W]e believe that the families of those children, as well as other families, should have the opportunity to enroll their children in private schools in their new locations." He further indicated that the Administration proposes to offer one-time grants to the states, which would then make the funding available to families. Similar to what they propose for public

⁸⁷ The full speech is available online at [<http://www.ed.gov/news/speeches/2005/09/09222005.html>].

school, the grants for private school students would be up to 90% of the average per-pupil expenditure for the state or \$7,500, however the maximum could not exceed the tuition for the student.

Higher Education

The details with respect to the Administration's proposal for IHEs and the students who attend these institutions are limited. An article in *The Chronicle of Higher Education*, on September 16, 2005, stated that Secretary Spellings outlined the details of the proposal which included the following: allow loan borrowers to defer payments on loans without interest for six months; provide \$1,000 per student to IHEs that enroll a student from an IHE in an affected area; permit IHEs to retain federal aid that they already received prior to the hurricane; relieve students who received federal aid of their obligation to return the funds because the IHE in which he/she enrolled temporarily closed because of the hurricane; and give the Secretary additional waiver authority to modify provisions she determines are necessary to assist students and IHEs.⁸⁸ Some of these provisions are contained within proposed legislation, however, to date none of these provisions have been enacted into law. Loan borrowers have been granted a six month forbearance as opposed to a deferment, and the Secretary has been granted certain waiver authorities to respond to the situations presented by the recent hurricanes.

Employment and Training

In a speech delivered on September 15, 2005, the President stated that he proposed to create Worker Recovery Accounts to help evacuees who need extra help finding employment. Specifically, he indicated that accounts would be established on behalf of individual displaced workers, in the amount of \$5,000, and the funds could be used for job training and education to help attain job, or for child care expenses while the person was searching for employment.⁸⁹ To date, no additional information has been posted on the White House website or the DOL website with respect to these accounts.

crsphpgw

⁸⁸ The full text of the article is available at [<http://chronicle.com/daily/2005/09/2005091613n.htm>]. Also see, "New Support for Families and Areas Affected by Hurricane Katrina." Available at [<http://hurricanehelpforschools.gov/0916-fact-sheet.html>].

⁸⁹ The full speech is available at [<http://www.whitehouse.gov/news/releases/2005/09/20050915-8.html>].